IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.216 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr.S.G.Deshmukh with Mr. R.D. Suryawanshi, for the Petitioners

CORAM : F.I. REBELLO,J.

DATED : JANUARY 27, 2005

P.C.

. The Commissioner was appointed. The trial Court has accepted the report of the Commissioner after following due process. The petitioner had filed his objections and also requested for appointment of second Commission. Both have been rejected by the order dated 2nd November, 2004, which is the subject matter of the present petition.

2. No party to the proceedings is prohibited from examining witnesses including expert witnesses to prove or establish their case. The Appointment of Commissioner is only for elucidation of the controversy in dispute. The plaintiff, therefore, is not prohibited if he so advised from leading his evidence. The question is whether this Court in the exercise of its extra ordinary jurisdiction

would interfere at this stage firstly in respect of the report of the Commissioner. To my mind such exercise cannot be undertaken as if the petitioner is aggrieved by the findings recorded it will always be open to him to raise this points ultimately in the Appeal if aggrieved by the judgment of the trial Court. In so far as second Commission is concerned, once a Commissioner is appointed there is no question of appointing a second commission. The learned Counsel relies on the judgment in the case of Vemba Gounder v. Pooncholai Gounder, AIR 1996 Madras 347 to contend that second Commissioner can be appointed even if the Court has accepted the report of the first Commissioner. On the facts of that case it can be seen that in fact the Court therein chose not to interfere with the dismissal of the application for appointment of a second Commissioner on the facts of that case. Even otherwise once a Commissioner is appointed unless that report is rejected it will be difficult to accept the contention that another Commissioner in respect of the same issue can once again be appointed. Considering the above to my mind this would not be a fit case for this Court to whatever errors the Commissioner have been committed to

interfere with the impugned order. No interference called for. Writ Petition rejected.

(F.I. REBELLO, J.)